CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202006195	☐ Force ☑ Abuse	☐ Discourt. ☐ O.L.	☐ U.S. ☐ Injury

Incident Date(s)	Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Thursday, 08/13/2020 4:00 AM	56th Street and 4th Avenue		72	2/13/2022	5/4/2022

Date/Time CV Reported	CV Reported At:	How CV Reported:	Date/Time Received at CCRB
Mon, 09/14/2020 8:44 AM	IAB	Phone	Mon, 09/14/2020 8:44 AM

Complainant/Victim	Type	Home Address
▮	▮	▮

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Roller	24796	962748	072 PCT
2. POM Anthony Pace	31818	965388	072 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ismael Hernandezcarpio	19759	967919	072 PCT
2. POM Anthony Lagrutta	15961	964105	072 PCT
3. SGT Nicholas Mui	05109	954158	072 PCT
4. POM James Buckley	02403	963421	072 PCT
5. POM Michael Migdal	5164	967606	072 PCT
6. POM Derrick Mcintosh	08849	937068	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anthony Pace	Abuse: Police Officer Anthony Pace searched the vehicle in which § 87(2)(b) was an occupant.	▮
B.POM Anthony Pace	Abuse: Police Officer Anthony Pace refused to provide his name to § 87(2)(b)	▮
C.POM Jason Roller	Abuse: Police Officer Jason Roller threatened to arrest § 87(2)(b)	▮

Case Summary

On August 13, 2020, § 87(2)(b) called IAB to file the following complaint. On September 14, 2020, IAB transferred the complaint (with original log number 2020-19506) to the CCRB.

On August 13, 2020, at approximately 4:00 a.m., in the vicinity of 56th Street and 4th Avenue in Brooklyn, § 87(2)(b) parked his vehicle and went to a store to buy a pack of cigarettes. When he returned to his vehicle, § 87(2)(b) saw PO Pace, of the 72nd Precinct, searching his vehicle (**Allegation A: Abuse of Authority – Vehicle search,** § 87(2)(g) § 87(2)). § 87(2)(b) then asked PO Pace and PO Migdal, also of the 72nd Precinct, for their names and they did not respond (**Allegation B: Abuse of Authority – Refusal to provide name,** § 87(2)(g))

PO Roller, also of the 72nd Precinct, was also on scene and asked § 87(2)(b) for his ID in order to issue him a summons. PO Roller said to § 87(2)(b) "If you don't provide your ID, you will be taken down to the precinct in order to verify your identity" (**Allegation C: Abuse of Authority – Threat of arrest,** § 87(2)(g))

Additional officers from the 72nd Precinct responded to the scene, including PO Hernandezcarpio, PO Lagrutta, PO Mcintosh, and Sgt. Mui. § 87(2)(b) eventually provided his ID and PO Roller issued him two summonses, #§ 87(2)(b) and #§ 87(2)(b) for leaving his vehicle running while unattended and another for double parking. No arrest was made.

BWC was obtained from all eight officers on scene, however both **Allegations A** and **B** are not captured on video (**BRs 06 – 14**). § 87(2)(g)

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Anthony Pace searched the vehicle in which § 87(2)(b) was an occupant.

**Allegation (B) Abuse of Authority: Police Officer Anthony Pace refused to provide his name to § 87(2)(b) **

Allegation (C) Abuse of Authority: Police Officer Jason Roller threatened to arrest § 87(2)(b) .

It was undisputed that § 87(2)(b) parked his vehicle in the middle of 4th Avenue, next to a median dividing the two ways of traffic. It was also undisputed that § 87(2)(b) s windows were tinted. Finally, it was undisputed that PO Pace looked inside § 87(2)(b) s vehicle and at one point, PO Roller threatened to arrest § 87(2)(b)

§ 87(2)(b) consistently stated that an officer called out to him, "You good?" as he crossed 4th Avenue to purchase cigarettes. When he returned to his vehicle, he saw an officer (identified by the investigation as PO Pace) leaning inside and shining a flashlight inside his vehicle (**BRs 01, 02**).

In his phone statement, § 87(2)(b) explained that because it was so early in the morning the deli where he purchased cigarettes was closed, but you could purchase items through a window that the owner opened up to the street. § 87(2)(b) stated that he has purchased cigarettes there many times before and that the owner had his cigarettes ready for him by the time he reached the store window. § 87(2)(b) estimated that it took about fifteen seconds to purchase the cigarettes. He stated that he then turned around and saw the driver's door to his vehicle was open, with an officer inside his vehicle. Specifically, he saw PO Pace inside his vehicle with his knee on the driver's seat looking around the inside of his vehicle. § 87(2)(b) immediately asked PO Pace for his name and PO Pace simply asked for his ID. § 87(2)(b) then got into an argument with PO Roller regarding the legality of leaving a vehicle running and whether that warranted a vehicle search. § 87(2)(b) then requested a supervisor to the scene (**BR 01**).

PO Pace (**BR 04**), PO Migdal (**BR 05**), and PO Roller (**BR 03**) were all interviewed for this complaint.

PO Pace (**BR 04**) stated that he was driving northbound on 4th Avenue when he observed § 87(2)(b) turn onto 4th Avenue from an intersecting street, running a red light and almost hitting PO Roller's vehicle in the process. PO Pace then made a U-turn and observed § 87(2)(b) run several more red lights before double parking his vehicle and exiting it with the vehicle running. PO Pace and PO Migdal approached § 87(2)(b) 's vehicle. PO Pace could not recall if PO Roller approached the vehicle at the same time as them. PO Pace, who could not see inside § 87(2)(b) 's vehicle due to tints, opened the driver's door and looked inside the vehicle to confirm if the vehicle was indeed running and if any passengers were inside. § 87(2)(b) then returned to his vehicle and got into an argument with PO Roller, who asked for his ID. PO Pace stated that § 87(2)(b) initially refused to provide his ID until Sergeant Mui arrived on scene. PO Pace said he did not refuse to provide his name to § 87(2)(b) but he did not remember if § 87(2)(b) asked him.

PO Migdal (**BR 05**) provided a statement consistent with PO Pace's, though he could not recall as many details. PO Migdal did not recall if PO Roller threatened to arrest § 87(2)(b) at any point, nor could he recall if any officer refused to provide their name to § 87(2)(b)

PO Roller (**BR 03**) provided a statement also consistent with PO Pace's. He further stated that PO Pace had to lean into § 87(2)(b) 's vehicle to see if the vehicle was running and if there were any passengers. He also stated that it took § 87(2)(b) "about ten seconds" to purchase his cigarettes and then "speed walked" back to his vehicle. PO Roller explained that he asked § 87(2)(b) for his ID four or five times and that § 87(2)(b) told him that he did not have to provide it to him. PO Roller stated that he threatened to arrest § 87(2)(b) because he needed to verify § 87(2)(b) 's identity in order to issue him a summons. He further clarified that he said arrest because by that point, § 87(2)(b) could have been arrested for disobeying lawful orders as well as for the vehicle infractions.

PO Pace, PO Migdal, and PO Roller all consistently stated that they did not turn on their BWCs until § 87(2)(b) refused to provide his ID, because until that point, they had no intention of issuing him a summons (**BRs 03 – 05**).

PO Roller's BWC (**BRs 06, 14**) is consistent with officer statements. At 1:18, PO Roller says, "My boss is coming here, like I just told you, you're gonna get arrested." § 87(2)(b) asks what he is going to be arrested for. PO Roller says that he saw § 87(2)(b) run a red light on 4th Avenue, pull over at 56th Street, and exit his vehicle with his car running, which is a "criminal court violation." PO Roller said that he needs to issue § 87(2)(b) a summons, but since § 87(2)(b) is refusing to provide his ID, he needs to bring § 87(2)(b) back to the precinct to confirm his identity. § 87(2)(b) does not provide his ID until the 4:00 minute mark, after Sgt. Mui is on scene.

The investigation confirmed C-summons #§ 87(2)(b) for leaving a vehicle running unattended (**BR 21**), however the investigation found no results for any summons with the number #§ 87(2)(b) (**BR 22**).

According to <u>People v. Hernandez, 238 A.D.2d 131</u>, an officer breaching the plane of the car doorway with his body or arm to reach inside the vehicle constitutes a search of a vehicle. There must be probable cause that a vehicle contains contraband, weapons, or evidence of a crime to justify a warrantless search of a vehicle (**BR 15**).

<u>NYC Admin Code § 10-111</u> "Unattended vehicles" states "It shall be unlawful for any person driving or in charge of a motor vehicle to permit it to stand unattended on the streets or thoroughfares of the city, without first stopping the engine, locking the ignition and, where the ignition is locked or unlocked by a key or other device, removing such key or other device (**BR 16**). The provision also states, "Whenever a police officer shall find a motor vehicle standing in violation of this provision, the officer may stop the engine and/or remove the ignition key or device therefrom and, in the event that the owner or operator thereof is not present, shall deliver the ignition key or device to the nearest patrol precinct station house within one hour after removing same to be held for and returned to such owner or operator. In the event the key or device is so

delivered to a station house, the officer shall attach to the vehicle a tag stating where the ignition key or device may be reclaimed."

§ 87(2)(g)

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§ 87(2)(g)

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NYPD Patrol Guide 209-09 states that officers, when issuing a summons returnable to the Traffic Violations Bureau or Criminal Court, are "In traffic cases, examine driver's license, vehicle registration, and insurance identification card for vehicles registered in New York State" and are to "Remove violator to command for investigation if doubt concerning identity exists" (**BR 17**).

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- § 87(2)(b) ███████ has been party to one CCRB complaint and has been named as a victim in two allegations (**BR 18**).
  - § 87(2)(b) ██
    ██
- PO Pace has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Roller has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- This case was no longer suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
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- On June 15, 2021, a FOIL request for any Notice of Claim submitted to the Office of Comptroller regarding this incident was returned with no results (**BR 20**).

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Squad: _____10_____

Investigator: _____Carter Garfield_____   _____Inv. Garfield_____   _____7/22/2021_
                        Signature   Print Title & Name   Date

Squad Leader: _Eric Rigie_____   _IM Eric Rigie_____   _7/26/2021_____

CCRB Case # 202006195

	Signature	Print Title & Name	Date

Reviewer: _____ _____ _____

	Signature	Print Title & Name	Date

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